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4 THE HONORABLE SALVADOR MENDOZA, JR.

5
6 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

7 TYLER JAMES THOMAS
8 LANKFORD,

9 Plaintiff,

10 v.

11 CITY OF PULLMAN; COUNTY
OF WHITMAN; STATE OF
WASHINGTON; OFFICER
12 JOSHUA BRAY; OFFICER
BRIAN CHAMBERLAIN;
13 DETECTIVE TODD DOW;
OFFICER ALEX GORDON;
14 SERGEANT SAM SOREM;
OFFICER GREG UMBRIGHT;
15 OFFICER JUSTIN DEROSIER;
OFFICER MIKE PETLOVANY;
16 and DOES I-X,

17 Defendants.

NO. 2:16-cv-00377-SMJ

DEFENDANTS STATE OF
WASHINGTON AND MIKE
PETLOVANYS' ANSWER,
AFFIRMATIVE DEFENSES
AND JURY DEMAND

18 COME NOW DEFENDANTS, STATE OF WASHINGTON and
19 MIKE PETLOVANY, hereby by and through the undersigned counsel and for
20 the answer to Plaintiff's Complaint admit, deny, and allege as follows:

21 **I. INTRODUCTION**

22 1. In answer to Paragraph 1.1 of Plaintiff's Amended Complaint,

DEFENDANTS STATE OF
WASHINGTON AND MIKE
PETLOVANYS' ANSWER,
AFFIRMATIVE DEFENSES
AND JURY DEMAND

Defendants Petlovany and Washington State deny the claims and damages as set out herein.

II. JURISDICTION

2. In answer to Paragraph 2 of Plaintiff's complaint, Defendants admit jurisdiction.

3. In answer to Paragraph 3 of Plaintiff's complaint, Defendants admit jurisdiction.

III. VENUE

4. In answer to Paragraph 4 of Plaintiff's complaint, Defendants deny the alleged unlawful acts as set out herein. Defendants admit the Eastern District is the appropriate forum.

IV. PARTIES

5. In answer to Paragraph 5 of Plaintiff's complaint, Defendants admit the same.

6. In answer to Paragraph 6 of Plaintiff's complaint, Defendants defer to the answer by Defendant City of Pullman.

7. In answer to Paragraph 7 of Plaintiff's complaint, Defendants defer to the answer by Defendant Whitman County.

8. In answer to Paragraph 8 of Plaintiff's complaint, Defendants admit the same.

9. In answer to Paragraph 9 of Plaintiff's complaint, this paragraph does

not apply to these answering Defendants. See Defendant City of Pullman's answer.

10. In answer to Paragraph 10 of Plaintiff's complaint, this paragraph does not apply to these answering Defendants. See Defendant City of Pullman's answer.

11. In answer to Paragraph 11 of Plaintiff's complaint, this paragraph does not apply to these answering Defendants. See Defendant City of Pullman's answer.

12. In answer to Paragraph 12 of Plaintiff's complaint, this paragraph does not apply to these answering Defendants. See Defendant City of Pullman's answer.

13. In answer to Paragraph 13 of Plaintiff's complaint, this paragraph does not apply to these answering Defendants. See Defendant City of Pullman's answer.

14. In answer to Paragraph 14 of Plaintiff's complaint, this paragraph does not apply to these answering Defendants. See Defendant City of Pullman's answer.

15. In answer to Paragraph 15 of Plaintiff's complaint, this paragraph does not apply to these answering Defendants. See Defendant Whitman County's answer.

16. In answer to Paragraph 16 of Plaintiff's complaint, Defendants admit

1 that Defendant Petlovany is an officer with Washington State
2 University who also acts as a member of a SWAT team directed by
3 other law enforcement agencies. Defendants deny the remainder of the
4 paragraph.

5 17. In answer to Paragraph 17 of Plaintiff's complaint, Defendants lack
6 sufficient information at this time to admit or deny and therefore deny
7 the same.

8 18. In answer to Paragraph 18 of Plaintiff's complaint, Defendants deny.
9 See answer to paragraph 16 and 17.

10 **V. ADMINISTRATIVE PROCEEDINGS**

11 19. In answer to Paragraph 19 of Plaintiff's complaint, Defendants lack
12 sufficient information to admit or deny. See Defendant City of
13 Pullman's Answer.

14 20. In answer to Paragraph 20 of Plaintiff's complaint, Defendants lack
15 sufficient information to admit or deny. See Defendant Whitman
16 County's Answer.

17 21. In answer to Paragraph 21 of Plaintiff's complaint, Defendants admit
18 Plaintiff filed a tort claim with Washington State after this action was
19 filed.

20 **VI. STATEMENT OF FACTS**

21 22. In answer to Paragraph 22 of Plaintiff's complaint, Defendants lack
22

sufficient information to admit or deny, and therefore deny the same.

23. In answer to Paragraph 23 of Plaintiff's complaint, Defendants lack sufficient information to admit or deny, and therefore deny the same.

24. In answer to Paragraph 24 of Plaintiff's complaint, Defendants lack sufficient information to admit or deny. See Co-Defendants Answers.

25. In answer to Paragraph 25 of Plaintiff's complaint, Defendants submit that the search warrant is in writing and the writing speaks for itself. Defendants deny the remainder of the paragraph.

26. In answer to Paragraph 26 of Plaintiff's complaint, Defendants admit that Officer Pelovany was called out as part of the SWAT or SRT team. Defendants lack sufficient information to admit or deny the actions alleged relating to Co-Defendants. See Co-Defendants Answers.

27. In answer to Paragraph 27 of Plaintiff's complaint, these answering Defendants were not involved in that part of the operation and Officer Petlovany was just there to provide back up and security as a member of the SWAT team. Defendants lack sufficient information to admit or deny, and therefore deny the same. See Co-Defendants Answers.

28. In answer to Paragraph 28 of Plaintiff's complaint, Defendants admit Plaintiff was taken into custody, but these answering Defendants lack sufficient information regarding the remainder of the paragraph and therefore deny the same. See co-defendants answers.

1 29. In answer to Paragraph 29 of Plaintiff's complaint, Defendants lack
2 sufficient information to admit or deny, and therefore deny the same.
3 See Co-Defendants Answers.

4 30. In answer to Paragraph 30 of Plaintiff's complaint, these answering
5 Defendants did not prepare any affidavit. Defendants submit that the
6 written affidavits speak for themselves. Defendants lack sufficient
7 information to further admit or deny, and therefore deny the same. See
8 Co-Defendants Answers.

9 31. In answer to Paragraph 31 of Plaintiff's complaint, Defendants deny
10 the same.

11 32. In answer to Paragraph 32 of Plaintiff's complaint, these answering
12 Defendants lack information on the events that transpired after the
13 SWAT team was released, and therefore deny the same. See Co-
14 Defendants Answers.

15 33. In answer to Paragraph 33 of Plaintiff's complaint, these answering
16 Defendants lack sufficient information to admit or deny, and therefore
17 deny the same. See Co-Defendants Answers.

18 34. In answer to Paragraph 34 of Plaintiff's complaint, these answering
19 Defendants lack information on the events that transpired after the
20 SWAT team was released, and therefore deny the same. Defendants
21 deny the claimed damages. See Co-Defendants Answers.

1 35. In answer to Paragraph 35 of Plaintiff's complaint, Defendants deny
2 the same.

3 **VII. FIRST CLAIM FOR RELIEF**
4 (42 United State Code § - Unlawful Seizure)

5 36. In answer to Paragraph 36 of Plaintiff's complaint, Defendants reassert
6 all previous answers.

7 37. In answer to Paragraph 37 of Plaintiff's complaint, Defendants deny
8 the same.

9 38. In answer to Paragraph 38 of Plaintiff's complaint, Defendants deny
10 the same.

11 39. In answer to Paragraph 39 of Plaintiff's complaint, Defendants deny
12 the same.

13 **VIII. SECOND CLAIM FOR RELIEF**
14 (42 United States Code § 1983 – Unlawful Search and Seizure)

15 40. In answer to Paragraph 40 of Plaintiff's complaint, Defendants reassert
16 all previous answers.

17 41. In answer to Paragraph 41 of Plaintiff's complaint, Defendants deny
18 the same.

19 42. In answer to Paragraph 42 of Plaintiff's complaint, Defendants lack
20 sufficient information to admit or deny, and therefore deny the same.

21 43. In answer to Paragraph 43 of Plaintiff's complaint, Defendants deny
22 the same.

1 44. In answer to Paragraph 44 of Plaintiff's complaint, Defendants deny
2 the same.

3 45. In answer to Paragraph 45 of Plaintiff's complaint, Defendants deny
4 the same.

5 **IX. THIRD CLAIM FOR RELIEF**
6 (Malicious Initiation of Prosecution – defendants Bray and Gordon)

7 46. In answer to Paragraph 46 of Plaintiff's complaint, Defendants reassert
8 all previous answers.

9 47. In answer to Paragraph 47 of Plaintiff's complaint, these answering
10 Defendants lack information on the events that transpired after the
11 SWAT team was released, and therefore deny the same. See Co-
12 Defendants Answers.

13 48. In answer to Paragraph 48 of Plaintiff's complaint, these answering
14 Defendants lack information on the events that transpired after the
15 SWAT team was released, and therefore deny the same. See Co-
16 Defendants Answers.

17 49. In answer to Paragraph 49 of Plaintiff's complaint, Defendants deny
18 the same. See Co-Defendants Answers.

19 50. In answer to Paragraph 50 of Plaintiff's complaint, Defendants deny
20 the same. See Co-Defendants Answers.

21 51. In answer to Paragraph 51 of Plaintiff's complaint, Defendants deny
22 the same. See Co-Defendants Answers.

X. FOURTH CLAIM FOR RELIEF

(42 U.S.C. § 1983 – Violation of First Amendment – Free Speech)

52. In answer to Paragraph 52 of Plaintiff's complaint, Defendants reassert all previous answers.

53. In answer to Paragraph 53 of Plaintiff's complaint, Defendants deny the same. See Co-Defendants Answers.

54. In answer to Paragraph 54 of Plaintiff's complaint, Defendants deny the same.

XI. FIFTH CLAIM FOR RELIEF

(American's with Disabilities Act, 42 U.S.C. § 12131 and Rehabilitation Act of 1973, 29 U.S. C. § 794 (Section 504) against the City of Pullman only)

55. In answer to Paragraph 55 of Plaintiff's complaint, Defendants reassert all previous paragraphs.

56. In answer to Paragraph 56 of Plaintiff's complaint, this paragraph asserts a statement of law that requires no answer.

57. In answer to Paragraph 57 of Plaintiff's complaint, to the extent this paragraph addresses a question of law, it required no answer. See Co-Defendants Answers.

58. In answer to Paragraph 58 of Plaintiff's complaint, to the extent this paragraph addresses a question of law, it required no answer. See Co-Defendants Answers.

59. In answer to Paragraph 59 of Plaintiff's complaint, Defendants deny the same.

1 60. In answer to Paragraph 60 of Plaintiff's complaint, to the extent this
2 paragraph addresses a question of law, it required no answer. These
3 answering Defendants had no contact with the Plaintiff. See Co-
4 Defendants Answers.

5 61. In answer to Paragraph 61 of Plaintiff's complaint, Defendants deny
6 the same. See Co-Defendants Answers.

7 62. In answer to Paragraph 62 of Plaintiff's complaint, Defendants deny
8 the same.

9 63. In answer to Paragraph 63 of Plaintiff's complaint, Defendants deny
10 the same.

11 **XII. SIXTH CLAIM FOR RELIEF**

12 (42 United States Code § 1983 – Monell Claim – County of Whitman
and City of Pullman)

13 64. In answer to Paragraph 64 of Plaintiff's complaint, Defendants reassert
14 all previous paragraphs.

15 65. In answer to Paragraph 65 of Plaintiff's complaint, Defendants deny
16 the same. See Co-Defendants Answers.

17 66. In answer to Paragraph 66 of Plaintiff's complaint, Defendants deny
18 the same. See Co-Defendants Answers.

19 67. In answer to Paragraph 67 of Plaintiff's complaint, Defendants deny
20 the same.

21 68. In answer to Paragraph 68 of Plaintiff's complaint, Defendants deny
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1 the same.

2 69. In answer to Paragraph 69 of Plaintiff's complaint, Defendants deny
3 the same.

4 70. In answer to Paragraph 70 of Plaintiff's complaint, Defendants deny
5 the same.

6 71. In answer to Paragraph 71 of Plaintiff's complaint, Defendants deny
7 the same.

8 72. In answer to Paragraph 72 of Plaintiff's complaint, Defendants deny
9 the same.

10 73. In answer to Paragraph 73 of Plaintiff's complaint, Defendants deny
11 the same.

12 74. In answer to Paragraph 74 of Plaintiff's complaint, Defendants deny
13 the same.

14 **STATE CLAIMS**

15 **XIII. SEVENTH CLAIM FOR RELIEF**
16 (State of Washington, County of Whitman, and
City of Pullman – Respondeat Superior)

17 75. In answer to Paragraph 75 of Plaintiff's complaint, Defendants reassert
18 all previous paragraphs.

19 76. In answer to Paragraph 76 of Plaintiff's complaint, to the extent this
20 paragraph addresses a question of law, it required no answer.

21 Defendants admit that Officer Petlovany was properly acting in the
22

1 course and scope of his duties as a member of the joint SWAT team.

2 Defendants deny the remainder of the paragraph and defer to Co-

3 Defendants Answer on claims relating to other Defendants.

4 **XIV. EIGHTH CLAIM FOR RELIEF**
5 (Trespass)

6 77. In answer to Paragraph 77 of Plaintiff's complaint, Defendants reassert
7 all previous paragraphs.

8 78. In answer to Paragraph 78 of Plaintiff's complaint, Defendants deny
9 the same.

10 **XV. NINTH CLAIM FOR RELIEF**
11 (Conversion)

12 79. In answer to Paragraph 79 of Plaintiff's complaint, Defendants reassert
13 all previous paragraphs.

14 80. In answer to Paragraph 80 of Plaintiff's complaint, Defendants deny
15 the same.

16 **XVI. TENTH CLAIM FOR RELIEF**
17 (False Arrest and Imprisonment)

18 81. In answer to Paragraph 81 of Plaintiff's complaint, Defendants reassert
19 all previous paragraphs.

20 82. In answer to Paragraph 82 of Plaintiff's complaint, Defendants deny
21 the same.

22 83. In answer to Paragraph 83 of Plaintiff's complaint, Defendants deny
the same.

XVII. AFFIRMATIVE DEFENSES

By Way of FURTHER ANSWER and AFFIRMATIVE DEFENSES,
Defendants allege:

1. Plaintiff's alleged damages were caused in whole or in part by
Plaintiff's own conduct;

2. If Plaintiff was damaged as alleged, all damages alleged were
proximately caused by independent, unforeseeable, superceding, and intervening
acts of persons other than these answering Defendants.

3. Plaintiff's alleged damages were caused in whole or in part by
individuals/entities over whom these answering Defendants have no control,
these include but are not limited to other law enforcement officials, state and
federal criminal prosecuting authorities, various media entities, and family
members and witnesses reporting information, misconduct and/or safety
concerns relating to the Plaintiff;

4. Plaintiff's complaint fails to state a cause of action against these
answering Defendants;

5. Plaintiff's claims are barred by the Doctrine of Qualified Immunity;

6. Plaintiff's Complaint fails to state a cause of action against these
answering Defendants.

7. Plaintiff's claims are without merit;

8. All acts of Defendants were performed in good faith within the
reasonable parameters of the law and with probable cause and/or consistent with

1 a valid warrant. Defendants did not violate any constitutional or federally
2 protected right;

3 9. Defendant WSU, State of Washington, was not acting in any official
4 capacity.

5 10. Defendants are immune from liability pursuant to Washington State
6 law.

7 11. Plaintiff's claims are barred and Defendants are entitled to immunity
8 pursuant to RCW 9A.46.090, RCW 71.05.120, RCW 10.93 et. seq., and as
9 otherwise provided by Washington law.

10 12. Defendants conduct is protected by the Public Duty Doctrine.

11 13. Plaintiff failed to reasonably mitigate his alleged damages.

12 **XVIII. RESERVATION OF RIGHTS**

13 Defendants, State of Washington and Mike Petlovany, specifically reserve
14 the right to amend their answer by adding affirmative defenses, counterclaims,
15 cross claims or by instituting third-party actions as additional facts are obtained
16 through further investigation and discovery.

17 **XIX. PRAYER FOR RELIEF**

18 WHEREFORE, Defendants, State of Washington and Mike Petlovany,
19 pray that Plaintiff's Complaint be dismissed with prejudice, and that Plaintiff take
20 nothing by her Complaint, and that Defendant, State of Washington and Mike
21 Petlovany, be allowed their attorney fees and costs pursuant to RCW 4.84.185,
22

1 RCW 4.24.350, and F.R.C.P. 11, and 42 U.S.C. §1988 for any and all claims by the
2 Plaintiff which are determined to be frivolous and advanced without reasonable
3 cause, and/or with malice, and such other relief as the Court may deem equitable in
4 the premises.

5 **XX. JURY DEMAND**

6 In the event this case proceeds to trial, Defendants demand that this case be
7 tried to a jury.

8 DATED this 16th day of May, 2017.

9 ROBERT W. FERGUSON
10 Attorney General

11 s/Amy C. Clemmons
12 AMY CLEMMONS
13 WSBA No. 22997
14 Assistant Attorney General
15 Attorney for Defendant Mike Petlovany
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CERTIFICATE OF SERVICE

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 16th of May, 2017, at Spokane, Washington.

s/Amy C. Clemmons
AMY C. CLEMMONS, WSBA# 22997
Assistant Attorney General
Attorney for Defendant Mike Petlovany